

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA)	Criminal No. 5-95CR-074-C
)	
v.)	Filed: 12/13/95
)	
OBERKAMPF SUPPLY)	Violation:
OF LUBBOCK, INC.;)	
)	
CYRIL REASONER; AND)	15 U.S.C. § 1
)	
CLOWE & COWAN, INC.,)	
)	
Defendants.)	

MOTION FOR DISCOVERY

COMES NOW the United States of America, through its undersigned attorneys, and respectfully requests this Honorable Court to enter an Order pursuant to Federal Rules of Criminal Procedure 16(b) and 26.2, and Federal Rule of Evidence 1006, requiring the defendants to permit the government to inspect and copy:

1. All books, papers, documents, photographs, tangible objects, or copies or portions thereof, which defendants intend to introduce as evidence-in-chief at trial;

2. Any writings, recordings or photographs, the contents of which defendants intend to introduce as evidence in the form of a chart, summary or calculation;

3. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which defendants intend to introduce as evidence-in-chief at the trial or which were prepared by, and relate to the testimony of, a witness whom

defendants intend to call at the trial; and

4. Any statement of a witness that defendants intend to call at trial that relates to the subject matter of the witness' testimony.

In addition, the government requests that the Court order the defendants to provide the government advance notice of the testimony of any expert witness defendants intend to call as well as the substance of each expert's testimony and any underlying material relied upon by the expert.

In support of this motion, the government respectfully represents to this Honorable Court that the defendants have requested disclosure of materials subject to Fed. R. Crim. P. 16(a)(1)(C) and (D) and that the government has made complete disclosure available to defendants pursuant to Rule 16(a)(1). Additionally, witness statements will be made available to the defendants pursuant to Federal Rule of Criminal Procedure 26.2 prior to the commencement of the trial. Early production of the latter material is being made voluntarily to avoid potential delays at trial.

Further, the government has provided to defendants, or provided them access to, all documents, the contents of which the government intends to introduce at trial in the form of a chart, summary or calculation.

WHEREFORE, the government prays that this Honorable Court enter an order requiring defendants to permit the government to inspect and copy the above-described materials in advance of trial.

Respectfully submitted,

WILLIAM C. MCMURREY

GLENN A. HARRISON

Attorneys
U.S. Department of Justice
Antitrust Division
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 655-2700

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MEMORANDUM IN SUPPORT OF
MOTION FOR DISCOVERY

COMES NOW the United States of America, through its attorneys, and files this Memorandum in support of its Motion for Discovery pursuant to Federal Rules of Criminal Procedure 16(b) and 26.2 and Federal Rule of Evidence 1006.

I.

Rule 16(b) of the Federal Rules of Criminal Procedure provides that, if the defendants request disclosure under Rule 16(a), upon compliance with such request by the government, the defendants will disclose to the government:

(A) . . . books, papers, documents photographs, tangible objects, or copies of portions thereof . . . which the defendant intends to introduce as evidence in chief at the trial.

(B) . . . results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof . . . which

the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

The government has made complete disclosure to defense counsel of all material to which defendants are entitled under Federal Rule of Criminal Procedure 16(a).

With the date for the trial of this case approaching, the government's need for disclosure of Rule 16(b) material is immediate. Therefore, the government respectfully requests this Court to require defendants to disclose to the government in advance of trial all material called for by Rule 16(b).

II.

Pursuant to the "Jencks Act", 18 U.S.C. § 3500, a criminal defendant is entitled to discover the prior statement of any prosecution witness after that witness has testified. On December 1, 1980, Rule 26.2 of the Federal Rules of Criminal Procedure became effective. This Rule codifies and expands 18 U.S.C. § 3500, granting to the government the same rights to obtain statements of defense witnesses as defendants long have enjoyed with regard to obtaining the statements of prosecution witnesses.

Rule 26.2 provides in pertinent part:

After a witness other than the defendant has testified on direct examination, the court, on motion of the party who did not call the witness, shall order the attorney for the government or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

Because early production of the statements of government witnesses is being voluntarily provided to defendants to conserve the Court's time and to avoid delays during trial, the government submits that the Court also should order defense counsel to turn over to the government, prior to trial, statements of those individuals whom defendant plan to call as witnesses. As is the case with documentary materials, early production of these materials prior to trial obviate the possibility that the government may need to move for a recess to examine the statements pursuant to Federal Rule of Criminal Procedure 26.2(d), thereby delaying the trial.

III.

Federal Rule of Evidence 1006 provides in pertinent part:

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination of copying, or both, by other parties at reasonable time and place. (Emphasis added)

The government submits that the reasonable time and place required by the Rule should allow the government sufficient time, in advance in trial, to examine and analyze such material in

preparation for trial. Early production of such material obviates the need to request a recess during the trial for the purpose of examining such material. The government therefore requests that the Court set a date for the disclosure of all material, the contents of which defendants intend to introduce into evidence in summary form. In this regard, the Court should be aware that the government already has disclosed to defendants such available material that it intends to introduce in this matter.

VI.

If defendants call an expert witness during trial, the government undoubtedly will inquire as to the basis for any opinion proffered by the expert witness during his direct testimony. The government then will be forced to request a recess to review the underlying material before meaningful cross-examination can proceed. To avoid this potential delay, the government requests that such notice and materials be provided to the government at least one day prior to such testimony. The advance notice is also necessary to ensure that the government will have an opportunity to schedule a comparable expert, if necessary, to hear and evaluate such expert testimony and material prior to cross-examination.

CONCLUSION

For the foregoing reasons, the government respectfully requests this Court to set a date by which all discovery shall be provided to the government.

Respectfully submitted,

_____/ "s" / _____
WILLIAM C. MCMURREY

_____/ "s" / _____
GLENN A. HARRISON

Attorneys
U.S. Department of Justice
Antitrust Division
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 655-2700

CERTIFICATE OF CONFERENCE

This is to confirm that on _____ , 1995, the undersigned conferred with Mr. A.W. SoRelle, Mr. Dan Hurley, and Mr. Mark Daniel concerning the above and foregoing motion. At that time, Mr. SoRelle, Mr. Hurley and Mr. Daniel authorized the undersigned to represent to the court that they opposed the motion.

_____/ "s" / _____

WILLIAM C. MCMURREY
Attorney

CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing Motion for Discovery, Memorandum in Support of Motion of Discovery, and proposed Order were mailed on the ____th day of _____, 1995, to

Daniel W. Hurley, Esq.
Hurley & Sowder
Attorney at Law
1703 Avenue K
Lubbock, Texas 79401

Mark G. Daniel, Esq.
Evans, Gandy, Daniel & Moore
Sundance Square
115 West Second Street
Suite 202
Fort Worth, Texas 76102

A. W. SoRelle III, Esq.
Underwood, Wilson Berry, Stein &
Johnson
Attorneys and Counselors at Law
1500 Amarillo National Bank Building
P.O. Box 9158
Amarillo, Texas 79105-9158

_____/ "s" / _____

WILLIAM C. MCMURREY
Attorney

UNITED STATES DISTRICT COURT

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Defendants.)	

ORDER

HAVING DULY CONSIDERED the United States' Motion for Discovery and the response of the Defendants,

IT IS HEREBY ORDERED that defendants provide to the attorneys for the government:

1. All books, papers, documents, photographs, tangible objects or copies or portions thereof, which defendants intend to introduce as evidence-in-chief at trial, no later than

_____, 1996;

2. Any writings, recordings or photographs, the contents of which defendants intend to introduce as evidence in the form of a chart, summary or calculation, no later than

_____, 1996;

3. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which defendants

intend to introduce as evidence-in-chief at the trial or which were prepared by, and relate to the testimony of, a witness whom defendants intend to call at the trial, no later than _____ 1996; and

4. Any statement of a witness that defendants intend to call at trial that relates to the subject matter of the witness' testimony prior to the commencement of defendants' case-in-chief.

IT IS FURTHER ORDERED that defendants provide to the attorneys for the government notice of any expert witness and the underlying basis of his expected testimony at least one day prior to such testimony.

DONE and ENTERED this _____ day of _____ 1995.

HONORABLE SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE